IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

NO. ~~77~~-874

GENANETT ALEXANDER, *et al.*,
Petitioners,

vs.

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT, *et al.*
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

TABLE OF AUTHORITIES

Cases

Statutes

Miscellaneous

TABLE OF AUTHORITIES (Continued)

Miscellaneous (Continued)

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OPINIONS BELOW

The opinion containing the findings of fact and conclusions of law of the United States District Court for the Southern District of Indiana is unreported and is reproduced in the Appendix at page A-1. The opinion of the United States Court of Appeals for the Seventh Circuit, is reported at 555 F.2d 166, and is reproduced in

the Appendix at page A-6. The order of the Court of Appeals denying plaintiffs' Petition for Rehearing *En Banc* is reproduced in the Appendix at page A-17.

JURISDICTION

The judgment of the Court of Appeals was entered May 20, 1977. The order denying plaintiffs' Petition for Rehearing *En Banc* was entered September 19, 1977, and this Petition is filed within 90 days of that date. The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. Sec.1254(1).

QUESTION PRESENTED FOR REVIEW

Whether tenants who reside in a housing project acquired by the United States Department of Housing and Urban Development [HUD] and who are ordered by HUD to vacate their residences pursuant to written notices issued by HUD for its property disposition program are "displaced persons" under Section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sec.4601(6), and thus entitled to relocation assistance.

STATUTORY PROVISIONS INVOLVED

This case involves the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [URA], 42 U.S.C. Secs.4601-4626. The relevant provisions are reproduced in the Appendix at page A-19.

STATEMENT OF THE CASE

A. Summary of the Facts

Petitioners (hereinafter "tenants") are low- and moderate-income persons who formerly resided at River-

house Tower Apartments [Riverhouse], a 294-unit project located in Indianapolis, Indiana. Riverhouse originally was built by a non-profit corporation, Riverhouse Apartments, Inc., which secured permanent financing for the complex through a mortgage insured and subsidized by HUD under Section 221(d)(3) of the National Housing Act as amended, 12 U.S.C. Sec. 1715*l*(d)(3).

In July, 1970, Riverhouse Apartments, Inc., defaulted on its mortgage, and in December, 1970, the mortgagee assigned the mortgage to HUD. When the default persisted, the United States initiated foreclosure proceedings in May, 1973, and a court-appointed receiver operated Riverhouse until it was purchased by HUD at a Marshal's sale on August 13, 1974.

After purchasing Riverhouse, HUD hired a management agent to carry forward general management responsibilities including entering into new leases and making authorized repairs. However, during this time, HUD decided not to rehabilitate the property, and, in fact, permitted the buildings to sink into such a state of decay that in November, 1974, HUD could declare that the tenants' interests would best be served by closing the project.

During this same period following purchase HUD began formulation of its property disposition program by evaluating its options. A number of alternatives were available to HUD. For example, HUD could have decided to retain ownership of Riverhouse and rehabilitate all or part of the complex, make essential repairs, or make no repairs at all. Further, in deciding to retain Riverhouse, HUD could have honored existing leases and entered into leases with new tenants; or it could have demolished the property or held it as an investment. In the alternative,

HUD could have chosen to sell the property either rehabilitated or "as is", and could have provided a new owner with subsidies and mortgage insurance. From among these options, HUD chose to evict the tenants, close Riverhouse and hold it for future investment opportunity.

In closing the project, HUD also decided to impose the financial burden of relocation upon the tenants and, indeed, HUD provided the tenants with no relocation assistance whatsoever. HUD also decided that it was in its own best interest not to disclose its plans for the future of the Riverhouse until this litigation was completed.

B. Course of the Proceedings

The tenants initiated this litigation in December, 1974, to prevent the closing of their apartment buildings. They sought an injunction requiring HUD to make essential repairs and to keep the project open. Alternatively, the tenants prayed for a declaration that should the project be closed, the tenants were entitled to benefits under the URA. Following the closing of the project, the tenants filed an Amended Complaint in which they asked for URA benefits and the return of some security deposits. Jurisdiction of this cause was conferred on the District Court by 28 U.S.C. Sec. 1337, 28 U.S.C. Sec. 1346, and 5 U.S.C. Sec. 701.

C. The Rulings Below

On the basis of these facts, the district court held that the tenants were not "displaced persons" under the URA, and thus were not entitled to URA assistance.[1] In so holding, the district court concluded that the "termination of the present use of Riverhouse Tower Apartments is not a 'program or project undertaken by a federal agency' to which the provision of the Uniform Relocation Act append." Further, the district court concluded that the tenants were ineligible to receive URA benefits because the "type of federal financial assistance received by Riverhouse Tower Apartments under the National Housing Act is excluded from the definition of 'federal financial assistance' set forth in the Uniform Relocation Act, 42 U.S.C. Sec. 4601(6)."

1 The District Court also ruled that the tenants were not entitled to the return of their security deposits.

On appeal, the United States Court of Appeals for the Seventh Circuit affirmed the judgment of District Court. Relying upon *Caramico v. Secretary of HUD*, 509 F.2d 694 (2d Cir. 1974), the Seventh Circuit concluded that the eviction of tenants from federally owned housing projects following foreclosure is not the sort of displacement to which benefits attach under the URA. The Seventh Circuit delineated those circumstances under which the URA is applicable, declaring that a displaced person qualifies only where governmental activities involve "the acquisition of land to accomplish an objective benefitting the public or fulfilling a public need." 555 F.2d at 170. Because the court of appeals concentrated on the termination of the previous Section 221(d)(3) program and ignored the property disposition program required by 24 C.F.R. Part 270,[2] the court concluded that the closing of Riverhouse could not be considered such a program or project. In consequence, the Seventh Circuit held that the tenants were not "displaced persons" within the meaning of the URA.

2 See also, *HUD Property Disposition Handbook, Multi-Family Properties*,4315.1.

REASONS FOR GRANTING THE WRIT

A. The Decision Below Conflicts With A Decision Of The United States Court Of Appeals For The District Of Columbia Circuit

The instant case is in direct conflict with *Cole v. Harris*, Nos. 75-2268, 75-2269 (D.C. Cir., Nov. 14, 1977).. *Cole* involved the displacement of residents of Sky Tower, a housing project located in Washington D.C., which was purchased in 1970 by a non-profit corporation with HUD mortgage insurance and subsidies. HUD subsidized the interest rate on the mortgage under a program designed to bring rents within the reach of low- and moderate-income families.[3] Upon default, the mortgagee foreclosed the mortgage and conveyed title to HUD in exchange for mortgage insurance proceeds. Thereafter, HUD hired a management firm to operate the project. However, a year later, HUD concluded that the project was blighted, vandalized, unsafe and unattractive. Accordingly, HUD decided to forego rehabilitation and instead, ordered residents to vacate the project and began to demolish the structures. In response, Sky Tower residents filed suit seeking to prevent further demolitions and a declaration that the URA was applicable to the tenants ordered to vacate.

Alexander and *Cole* share a common nucleus of operative facts. Both involved multi-family housing projects insured and subsidized by HUD. Following default by private mortgagors, HUD acquired, operated and closed the projects, and evicted the residents as a part of its property disposition program. In both cases, HUD refused to provide URA assistance to the residents, forcing them to search for shelter in tight housing markets made even tighter by the closing of these projects.

3 Section 236 of the National Housing Act, 12 U.S.C. Sec. 1715z-1. The Section 236 program essentially replaced the Section 221(d)(3) program.

Based upon these facts, the *Cole* court concluded that the dislocated residents of Sky Tower were "displaced persons" within the meaning of Section 101(6) of the URA, 42 U.S.C. Sec. 4601(6), and, in consequence, that they were entitled to URA benefits. In order to reach its conclusion, the District of Columbia Circuit construed the URA definition of "displaced person," which, reduced to its essential language, states:

> The term "displaced person" means any person who . . . moves from real property . . . as a result of the acquisition of such real property, . . . or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency . . . .

URA Sec. 101(6), 42 U.S.C. Sec. 4601(6). The *Cole* court held that this statute states two alternative grounds for eligibility, referred to by the court as "the acquisition clause" and "the notice clause." *Cole v. Harris, supra,* Slip Op. at 9.

Concentrating on the "notice clause," the court in *Cole* held that the eviction of tenants from a HUD-acquired project necessitated by HUD's choice to demolish the structures, was the kind of displacement for which Congress intended URA coverage. HUD was the acquiring agency; HUD issued written orders to the tenants to vacate Sky Tower; and the tenants moved as a result of those orders.

The court squarely held that the URA is not limited to federal construction and rehabilitation projects.

> Congress clearly did not intend that tenants displaced by a simple decision to wreck their homes would receive less protection than tenants displaced by a constructive urban renewal project.
>
> In sum, appellees qualify as "displaced persons" within the plain terms of the notice clause.

Cole v. Harris, supra, Slip Op. at 10. In sharp contrast, the Seventh Circuit, in the instant case, held that the URA applies only to construction and rehabilitation projects.

The conclusion and rationale of the Seventh Circuit irreconcilably conflicts with the judgment of the District of Columbia Circuit in *Cole v. Harris, supra*.[4] The contrasting results reached by the two courts undercut the essential purpose of the URA—to provide uniform and fair treatment of "persons displaced as a result of Federal and Federally assisted programs."[5] The two decisions leave the anomolous result that tenants residing in the District of Columbia are afforded essential relocation assistance while tenants residing in Indiana, Illinois, and Wisconsin are denied URA protection under identical circumstances. The conflict among the circuits cannot be reconciled and should be resolved by this Court.

B. This Case Raises A Significant Issue Relating To The Displacement Of Thousands Of People From Housing Owned By The Federal Government

For many years the two most notable federal and federally-assisted programs displacing vast numbers of poor families throughout the country were urban renewal and the federal highway program. Today, a third program threatens staggering displacement, namely, the

4 Indeed, Judge Wilkey, dissenting in *Cole*, argues that *Cole* and *Alexander* are indistinguishable and are in direct conflict, *Cole v. Harris, supra*, (dissenting opinion) at 1, 12, 25-26 and 29.

5 URA Sec. 201, 42 U.S.C. Sec.4621 (1970).

repossession and closing of federally-assisted, multi-family housing projects under HUD's property disposition program. Ironically, the large bulk of this housing is for low- and moderate-income families and was often built particularly for families displaced by other federal programs.[6]

In October, 1977, HUD reported to Congress the magnitude of the problem of repossessed multi-family projects. It was reported that 1,366 formerly subsidized projects housing 154,724 families were in "financial distress"—either owned by HUD, in serious default, or in the process of assignment or foreclosure.[7] The report projects that HUD's inventory of properties in financial distress would reach 3,000 projects housing 342,000 units by 1982. Commenting on this trend, a recent analysis of troubled HUD projects in Boston states:

> Unless this trend is reversed, HUD may eventually have to face a charge that it is directly or indirectly responsible for the effective displacement of thousands of low- and moderate-income families in these areas, with little prospect of standard housing being available to them at a rental they can afford.

HUD Boston Area Office, *Assisted Multi-Family Projects, City of Boston: A Strategy Paper* 12 (Feb. 1977)

6 Section 221(d)(3) of the National Housing Act, 12 U.S.C. Sec. 1715 1(d)(3), the program under which Riverhouse was constructed, was designed in large part to house displaced persons. See, 12 U.S.C. Secs. 1715 *l*(a), 1715 *l*(d)(3)iii, 1715 *l*(f); S.Rep. 1954 U.S Code & Cong. Adm. News, 2747-8.

7 Statement of Assistant Secretary Lawrence B. Simons on "HUD Troubled Projects" before the Senate Banking, Housing and Urban Affairs Committee, October 17, 1977, p. 2. The three stages of distress outlined by Assistant Secretary Simons were (with the number of projects indicated in parenthesis): 1) projects in the HUD-owned acquired property inventory (204); 2) projects in which the mortgage has been assigned to HUD or the project is in the process of foreclosure (950); and 3) projects in serious default, posing potential insurance claims (212).

reported in 4 *Housing & Development Reporter* No. 26 (March 21, 1977) at 950.

Consequently, the question presented by this case is of major importance from a variety of vantage points. First, the issue raised is of critical importance to the 154,724 families whose housing either is currently owned by HUD or which is likely to be acquired by HUD in the near future. Their displacement will be much more than a simple inconvenience, a fact amply demonstrated in the legislative activity which culminated in the URA. Voluminous reports, testimony, and debates repeatedly describe the financial demands and personal disruption caused by displacement, and document the particularly harsh effects upon the poor, the elderly, large families, and non-whites.[8] Congress viewed this personal hardship of unassisted displacement as one of two public policy reasons for passing the bill, the other being the need for uniformity among federal programs in assistance given to displaced persons. These Congressional concerns are stated in the Act's declaration of policy:

> The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

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8 *See, e.g.*, Remarks of Senator Muskie, 115 Cong. Rec. 31533 (1969), 116 Cong. Rec. 20463 (1970); Remarks of Congressman Ashley, 115 Cong. Rec. 36049 (1969); Remarks of Congressman Cohelan, 116 Cong. Rec. 11223 (1970); Remarks of Congressman Bennett, 116 Cong. Rec. 11224 (1970); Remarks of Senator Tydings, 115 Cong. Rec. 36049 (1969); Remarks of Congressman Koch, 115 Cong. Rec. 6101 (1969); S.Rep. No. 488, 91st Congress, 1st Session (1969); H.R.Rep. No. 1656, 91st Congress, 2d Session (1970).

URA Sec. 201, 42 U.S.C. Sec. 4621. They are also given life in the URA's broad definition of "displaced person" and in the generous benefits provided in the Act.[9]

Second, this case is of vital importance to local officials of cities which contain federally-held housing. These officials need to know whether or not HUD will provide relocation benefits and services to persons displaced from HUD-held housing. Should the URA apply to displacees of HUD-held properties, HUD would be required to assure that decent replacement housing be available, and would be required to provide assistance in locating that housing. *See*, 42 U.S.C. Secs. 4625, 4626. If the URA does not apply to the persons displaced by HUD, the burden of insuring decent and affordable housing shifts from the federal government to local government.

Third, a definitive resolution of the applicability of the URA to persons displaced from HUD-acquired projects is of manifest importance to HUD. Should this Court establish the applicability of the URA to Riverhouse situations, the cost of relocation would become a factor to be weighed by HUD in evaluating its various disposition options. *See, Cole v. Harris, supra*, Slip Op. at 16.

Consequently, it is not only the scope of the URA, but also the hardship imposed upon individuals and the responsibilities placed on local, state and federal governments resulting from displacement, which urge consideration of this case by the Court. A definitive ruling by this Court on the applicability of the URA will provide uniformity in the treatment of persons displaced by the

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9 A displaced tenant is entitled to moving expenses of $300.00 (42 U.S.C. Sec. 4622) a dislocation allowance of $200.00 (42 U.S.C. Sec. 4622) and a replacement housing expense of up to $4,000.00 (42 U.S.C. Sec. 4624).

government which is supposed to be the hallmark of the URA. For these reasons, it is essential that the Supreme Court grant this petition for a writ of certiorari.

CONCLUSION

Because the judgment of the Seventh Circuit Court of Appeals directly conflicts with the decision of the District of Columbia Circuit Court of Appeals, and because review of this case affords the opportunity to determine the appropriate interpretation of the URA, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

RULINGS BELOW

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

JOHN BLADES, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CIVIL NO. IP 74-706-C
	)	
U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *et al.*,	)	
	)	
Defendants.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This cause came before the Court on defendants' Motion To Dismiss and In The Alternative Motion For Summary Judgment and on Plaintiffs' Motion for Partial Summary Judgment, and the Court hereby makes the following findings of fact, conclusions of law, and judgment.

FINDINGS OF FACT

1. Riverhouse Tower Apartments, is a 294 unit apartment complex, located at 1150-1152 White River Parkway, West Drive, Indianapolis, Indiana.

2. The mortgage on Riverhouse Tower Apartments was insured by the Secretary of the Department of Housing and Urban Development in accordance with provisions of 221(d)(3) of the National Housing Act, as amended, 12 USC Sec. 1715 *l*(d)(3).

3. Under the 221(d)(3) program, private industry is encouraged to invest in multifamily projects through the provision of mortgage insurance which protects lenders against the risk of default by the mortgagor. In addition, upon completion of the project, mortgage interest rate is reduced to 3% per annum and is purchased by the Government National Mortgage Association.

4. Riverhouse Tower Apartments encountered financial difficulty and, the loan went into default on July 1, 1970.

5. The note and mortgage were assigned to the Secretary of the Department of Housing and Urban Development by the Goverment National Mortgage Association on December 22, 1970.

6. On May 9, 1973, the United States filed a complaint to foreclose the mortgage on Riverhouse Tower Apartments in the United States District Court for the Southern District of Indiana.

7. From May 11, 1973 through September 24, 1974, the project was in the possession of a court-ordered receiver.

8. The Secretary acquired title to Riverhouse Tower Apartments through a resulting Marshal's sale, and the deed to the Secretary of the Department of Housing and Urban Development was recorded on September 24, 1974.

9. At the time of acquisition, all of the plaintiffs were tenants of Riverhouse Tower Apartments.

10. Subsequent to acquisition, the Department of Housing and Urban Development attempted to keep Riverhouse Apartments occupied, but by the time of November 18, 1974, that Department decided to close the building because of the concern for the safety of the residents.

11. On November 18, 1974, the Department of Housing and Urban Development caused notices to quit by December 31, 1974 to be served on all tenants of Riverhouse Tower Apartments.

12. All tenants vacated Riverhouse Tower Apartments by February, 1975.

13. The Department of Housing and Urban Development did not provide relocation payments to tenants of Riverhouse Tower Apartments.

14. Each of the named plaintiffs paid the Department of Housing and Urban Development or the former owner of Riverhouse Tower Apartments a security deposit in the amount of $100.00 at the time of initial tenancy.

15. As of November 30, 1974, plaintiff Young was current in her rent, and the Department of Housing and Urban Development has returned the amount of her security deposit to plaintiff Young.

16. The defendants have admitted that they did not collect any rents for the month of December, 1974, and therefore,they have agreed to return the security deposits of plaintiffs Danforth, Robinson, Washington, and Whitney.

17. The defendants have also agreed to return to plaintiff Holland the sum of $16.75 to reimburse him for the difference between the amount of his security deposit and the amount of his rental delinquency as of November 30, 1974.

18. The records of the Department of Housing and Urban Development show that the remaining plaintiffs, Alexander, Hood, Jackson, and Pippens, were not current in their rent payments, and that their security deposits were kept to make up the deficiency. The sum of $83.25 of the scurity deposit of plaintiff Holland is also being kept by that Department to make up the deficiency in his rent, after returning the sum of $16.75 as previously described.

19. The plaintiffs argue that they were not obligated to pay all the rent which was due under the terms of their leases, alleging a breach of a warranty of habitability.

CONCLUSIONS OF LAW

1. Plaintiffs are not entitled to relocation assistance and payments under the Uniform Relocation Act of 1970, 42 USC 4601, *et seq.* and following sections. *Caramico v. Secretary of the Department of Housing and Urban Development*, 509 F.2d 694 (2nd Cir. 1974), *Harris, et al. v. Lynn, St. Louis Housing Authority, et al.*, E.D. Mo., Cause No. 74-124-C, decided February, 1976 (copy attached).

2. The type of federal financial assistance received by Riverhouse Tower Apartments under the National Housing Act is excluded from the definition of "federal financial assistance" set forth in the Uniform Relocation Act, 42 USC 4601(6).

3. The termination of the present use of Riverhouse Tower Apartments is not a "program or project undertaken by a federal agency" to which the provision of the Uniform Relocation Act append.

4. Whether there is a warranty of habitability in plaintiffs' leases is a question to be determined by federal law.

5. Under federal law, there is no implied warranty of habitability in plaintiffs' leases. *United States v. Neustadt*, 366 U.S. 696 (1961), *Davis v. Romney*, 490 F.2d 1360 (3rd Cir. 1974); *Jackson v. Lynn*, 506 F.2d 233 (D.C. Cir. 1973); *Patricia White, et al. v. Romney, et al.*, C.D. Calif., Cause No. 72-2646, decided December 18, 1972 (copy attached).

6. As there is no implied warranty of habitability with respect to property acquired by the Secretary pursuant to the National Housing Act, plaintiffs are not entitled to withhold rent because of an alleged breach of such a warranty, even if plaintiffs presented evidence, which they did not, that the alleged breach was, in fact, the reason for their non-payment of rent.

7. The Secretary of the Department of Housing and Urban Development was entitled to apply the amount of security deposit to the amount of each tenant's rental delinquency.

JUDGMENT

It is therefore ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered for the defendants.

Dated this 1 day of July, 1976.

/s/ CALE J. HOLDER

JUDGE, United States District Judge

Genanett ALEXANDER et al.,
Plaintiffs-Appellants,
v.
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT and Carla A. Hills, Secretary, Defendants-Appellees.
No. 76-1993.

United States Court of Appeals,

Seventh Circuit.

Argued April 13, 1977.

Decided May 20, 1977.

Rehearing and Rehearing En Banc Denied Sept. 19, 1977.

Before CUMMINGS and PELL, Circuit Judges, and CAMPBELL, Senior District Judge.*

WILLIAM J. CAMPBELL, Senior District Judge.

This is an appeal from an order of the district court granting defendants' motion for summary judgment. The facts are not in dispute.

The seventeen plaintiffs are former tenants of the Riverhouse Tower Apartments (Riverhouse), a complex consisting of two 12-high story buildings containing 294 apartments units located in Indianapolis,Indiana. The project was constructed by Riverhouse Apartments, Inc., a private nonprofit corporation and former mortgagor of Riverhouse. Repayment of a loan secured by the mortgage was insured by the Secretary of the Department of Housing and Urban Development (HUD) under Sec. 221(d)(3) of the National Housing Act, as amended, 12 U.S.C. Sec. 1715*l*(d)(3). In accordance with that

* Senior District Judge William J. Campbell of the Northern District of Illinois is sitting by designation.

section, upon the completion of the Riverhouse Project, the interest rate on the loan was reduced to 3%, and the mortgage was purchased by the Government National Mortgage Association.

Riverhouse Apartments, Inc. defaulted on the loan in July, 1970, In December of that year the mortgagee (Government National Mortgage Association) assigned the note and mortgage to HUD. Three years later, in face of the mortgagor's continuing default, HUD initiated a foreclosure action in the Southern Distict of Indiana. From May, 1973 until September,1974 Riverhouse was in possession of a court-appointed receiver. A Marshal's sale ensued, and HUD acquired title to Riverhouse.

After the acquisition,HUD employed the Federal Property Management Corporation to manage Riverhouse and to secure needed repairs.However, the condition of Riverhouse had so deteriorated that HUD determined to terminate the project. Affidavits in the record attest to the deplorable condition into which Riverhouse had fallen. The project was infested with roaches and vermin; elevators were often inoperable; security was poor; hot water and heat were inadequate or non-existent; the buildings were often flooded; lighting was poor in the narrow hallways which were often cluttered with garbage; plumbing was deficient, and some tenants had electrical problems.

Recognizing that Riverhouse was plagued by unsafe conditions, nonpayment of rents, and the excessive costs of bringing the project into good condition, HUD caused notices to quit to be served on all tenants. These notices were issued on November 18, 1974, requiring the tenants to vacate Riverhouse by December 31, 1974. By February, 1975 Riverhouse was vacant.

During the time the project was operating, all tenants were required to post a $100.00 security deposit at the time of their initial tenancy. When Riverhouse was terminated, HUD returned the security deposits to all tenants who were current in their rent payments. In the case of five of the plaintiffs, however, HUD applied the amount of their security deposits to the balance of any rent arrears.

In the district court, plaintiffs sought relocation benefits as provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sec. 4601 *et seq.* (URA). In support of this contention, plaintiffs asserted that the November 18, 1974 order to vacate Riverhouse made them eligible for benefits afforded to "displaced persons" within the meaning of URA. Further, the five plaintiffs whose security deposits were not returned due to rent arrears sought the return of those monies, alleging that HUD had breached a warranty of habitability which is to be implied in their leases. Owing to this breach, plaintiffs contended, the obligation to pay rent was relieved, and thus HUD wrongfully withheld those security deposits and applied them to the balance of rent arrears. The district court held URA inapplicable to the closing of the Riverhouse Project, and held there is no implied warranty of habitability in plaintiffs' leases. We affirm.

I.

Prior to the enactment of URA, there appear to have been two major legislative provisions for handling most relocation benefits: the Amendments to the Federal Housing Act, 42 U.S.C. Sec. 1465, which provided relocation assistance benefits to persons displaced by urban renewal projects, and the Highway Relocation Assistance Act, Pub.L. 91-605, 84 Stat. 1724, which

provided assistance benefits in connection with Federal Aid highway construction projects. In addition to urban renewal and highway construction projects, other legislative provisions dealt with relocation assistance to owners and tenants of land acquired by federal agencies for governmental purposes.[1] All of these relocation assistance provisions were repealed, 84 Stat. 1903, by the enactment of URA. Recognizing the disparities and inconsistencies existing among federal and federally assisted programs with respect to the amount and scope of benefits and other assistances, Congress sought to provide uniform treatment for those forced to relocate as a result of federal and federally aided public improvements programs. House Report No. 91-1556, 91st Cong. 2d Sess.; 1970 U.S.Code Cong. & Admin.News. pp. 5582-5583. *See also:* 42 U.S.C. Sec. 4621.

Relocation assistance under URA is afforded to "displaced persons". 42 U.S.C. Sec. 4601(6) defines a "displaced person" as:

> "Any person who . . . moves from real property, or moves his personal property from real property, as the result of the acquisition of such real property, . . . or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance;. . . ."

Several cases have discussed the eligibility aspects of URA. Even though persons were displaced by an urban renewal project, URA was held inapplicable to that project because the federal government had not executed

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1 E. g. 43 U.S.C. Secs. 1231 to 1234 (Secretary of the Interior), 42 U.S.C. Sec. 2473 (b)(14) (NASA), 10 U.S.C. Sec. 2680 (Military), 49 U.S.C. Sec. 1606(b) (Urban Mass Transportation), 42 U.S.C. Sec. 3074 (Condemnation for Development Programs), and 42 U.S.C. Sec. 3307(b), (c) (Demonstration Cities and Metropolitan Development).

a contract for a loan or grant—an activity held to be determinative of the federal nature of the project. *Feliciano v. Romney,* 363 F.Supp. 656, 672 (S.D.N.Y. 1973). *But see: LaRaza Unida v. Volpe,* 337 F.Supp. 221 (N.D.Cal. 1971), *aff'd.,* 488 F.2d 559 (9th Cir. 1973). Further, a person displaced by a project undertaken by a private institution receiving federal financial assistance for that project was found ineligible to receive relocation benefits. *Parlane Sportswear Company, Inc. v. Weinberger,* 381 F.Supp. 410 (D.Mass.1974), *aff'd.,* 513 F.2d 835 (1st Cir. 1975), *cert. denied,* 423 U.S. 925, 96 S.Ct. 269, 46 L.Ed.2d 252. *See also Jones v. HUD,* 390 F.Supp. 579 (E.D.La.1974).

Eligibility for URA benefits is also based on the requirement that a person be displaced "for a program or project undertaken by a Federal agency, or with Federal financial assistance." 42 U.S.C. Sec. 4601(6). This requirement has been interpreted to mean construction of new federal projects. *Jones v. HUD, supra,* 390 F.Supp. at 583.[2] In a case closely resembling the present, the Second Circuit intimated that Congress intended the program or project requirement of 42 U.S.C. Sec. 4601(6) to mean "construction" programs or projects. *Caramico v. HUD,* 509 F.2d 694, 698 (2d Cir. 1974).

In *Caramico,* a mortgagee of low income dwellings was required by FHA regulations to deliver possession of the mortgage property unoccupied in order to recover federal mortgage insurance. Upon default of the mortgagor and subsequent foreclosure, the mortgagee sought to evict the tenants in order to comply with the vacant delivery

2. The *Jones* opinion refers to an earlier unpublished opinion of the same district court. The reported decision lacks any analysis of the requirement that the claimant of URA benefits be displaced for a program or project undertaken by a Federal agency or with Federal financial assistance.

requirement. The Court found that the evicted tenants were not displaced within the meaning of 42 U.S.C. Sec. 4601(6) since, although there may have been an acquisition within the meaning of that section, the tenants did not show that the acquisition was for a program or project. *Id.,* at 697. Finding a crucial difference between mortgage insurance acquisitions and acquisitions under programs covered by URA, the Second Circuit characterized the former as "random and involuntary while normal urban renewal contemplates a conscious government decision to dislocate some so that an entire area may benefit." *Id.* at 698.

The tenants in this case contend that *Caramico* is distinguishable factually since in *Caramico* HUD was not the mortgagee, did not foreclose on the mortgage, and did not purchase the property from which the tenants were evicted. Further, plaintiffs argue *Caramico* involved the acquisition aspect of 42 U.S.C. Sec. 4601(6), whereas here plaintiffs rely on the aspect of that section dealing with the written order to vacate by the acquiring agency. Finally, plaintiffs seek to distinguish *Caramico* by arguing that the mortgagee in that case was FHA, and since under 12 U.S.C. Sec. 1717(b), the FHA had to convey to HUD, the conveyance was involuntary. But in this case, HUD was not compelled to purchase Riverhouse, nor was HUD required to issue the order to vacate.

Although distinguishable with respect to particular facts, *Caramico* involved the same inquiry as presented by this case, i. e., whether the activity of the governmental agency was "for a program or project undertaken by a Federal agency, or with Federal financial assistance." In this case, we conclude HUD's written order to the tenants of Riverhouse to vacate by December 31, 1974 was not for such a program or project.

The terms "program" and "project" are not defined in URA, nor does the legislative history illuminate Congress' intent with respect to those terms. Without any express indication from Congress as to what it meant by the use of these terms, we look to the objectives sought to be accomplished through the enactment of URA. 42 U.S.C. Sec. 4621 states:

> "The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

As this declaration of policy indicates, programs and projects are those activities designed for the benefit of the public as a whole. Thus, persons displaced by such programs are persons displaced by governmental activities involving the acquisition of land to accomplish an objective benefiting the public or fulfilling a public need. In this regard, an order by HUD to vacate a public housing project because that project had become an irretrievable failure cannot be considered such a program or project. HUD's decision to abandon the Riverhouse Project and its order to the tenants to vacate the facility cannot be characterized as a program or project undertaken by a federal agency to accomplish an objective benefiting the public as a whole. Rather, at best, HUD's decision and order to vacate represent a sad recognition that the Riverhouse Project failed to accomplish the government's objective of providing adequate public housing for the needy.

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3 In intimating that these terms were intended by Congress to mean "construction" programs and projects, the Second Circuit relied on various provisions of URA alluding to that type of activity. *See: Caramico, supra,* 509 F.2d at 698.

Plaintiffs point out that the purpose behind HUD's decision to order the tenants to vacate Riverhouse is undisclosed from the record, and that the Secretary has several options: rehabilitation, demolition, or sale of the facility. Plaintiffs argue that these undisclosed plans constitute a program or project within the meaning of URA. Riverhouse is a conceded failure as a project to provide public housing. We fail to see how a decision to terminate a project can itself become a project in the absence of some indication that the decision to terminate and the order to vacate constitute a prelude to some governmental undertaking amounting to a program designed for the benefit of the public as a whole.

II.

Five plaintiffs in this action claim that their obligation to pay rent was relieved by HUD's breach of a warranty of habitability which, plaintiffs contend, is to be implied in their leases. Thus, plaintiffs argue, their security deposits were wrongfully withheld by HUD, which applied those funds to rent arrears.

Plaintiffs have drawn our attention to a substantial number of reported decisions from various state jurisdictions which have revolutionized the law of landlord-tenant relationships by adopting a theory that in every residential lease, absent a valid contrary agreement, there is an implied warranty of habitability.[4] The courts adopting this theory have tended to treat leases of residential property as both a conveyance of an interest in real property and as an agreement giving rise to a

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4 E. g. *Pines v. Perssion,* 14 Wis.2d 590, 111 N.W.2d 409 (1961); *Jack Springs, Inc. v. Little,* 50 Ill.2d 351, 280 N.E.2d 208 (1972); *Old Town Development Company v. Langford,* 349 N.E.2d 744 (Ind.App. 1976); *Javins v. First National Realty Corp.,* 138 U.S.App.D.C. 369, 428 F.2d 1071 (1970), *cert. denied,* 400 U.S. 925, 91 S.Ct. 186, 27 L.Ed.2d 185 (1970).

contractual relationship in which the landlord's and tenant's obligations are mutually dependent. Most of the adopting jurisdictions analyzed the basic rationale underlying the old common law rule absolving the lessor from all obligation to repair the leased premises in favor of the lessee assuming such an obligation during the term of the lease, and concluded that such a rule was never really intended to apply to urban residential leaseholds. *See: Javins v. First National Realty Corp.*, 138 U.S.App. D.C. 369, 428 F.2d 1071, 1080 (1970) *cert. denied*, 400 U.S. 925, 91 S.Ct. 186, 27 L.Ed.2d 185 (1970). Recognizing that the rule of decision governing this case must be federal, plaintiffs suggest that we look to these state court decisions for guidance in developing a federal landlord-tenant law imposing a warranty of habitability in leases between federally owned low income housing projects and their tenants. *Cf. Illinois v. Milwaukee*, 406 U.S. 91, 107, 92 S.Ct. 1385, 31 L.Ed.2d 712 (1972).[5]

We decline plaintiffs' invitation to follow these state court decisions implying a warranty of habitability in urban residential leases in the private sector. We decline to do so because we are not persuaded that such warranties should be implied in leases of dwelling units constructed and operated as public housing projects. In contrast to housing projects in the private sector, the construction and operation of public housing are projects established to effectuate a stated national policy "to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income". 42 U.S.C. Sec. 1401.

5 *Illinois v. Milwaukee, supra*, involved a federal common law of nuisance in a water pollution context. The Court indicated that a state's environmental quality standards are relevant but not conclusive sources of federal common law. *Cf. also: Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456-457, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957).

As such, the implication of a warranty of habitability in leases pertaining to public housing units is a warranty that the stated objectives of national policy have been and are being met. We feel that the establishment of any such warranty that national policy goals have been attained or that those goals are being maintained is best left to that branch of government which established the objectives.

Plaintiffs further contend that the rationale of the various state court decisions implying the warranty in urban residential leases was advanced years ago by Congress when it enacted the United States Housing Act of 1937, 42 U.S.C. Sec. 1401 *et seq.* Pointing to the Congressional declaration of national housing policy contained in 42 U.S.C. Sec. 1441, the "comprehensive" regulatory scheme imposed on mortgagors of Section 221(d)(3) projects[6] and the various chapters of HUD's Property Disposition Handbook, Multifamily Properties, RHM 4315. 1(February 17, 1971), plaintiffs argue that these multiple obligations upon HUD, its mortgagors, and management agents to make repairs and generally maintain public housing facilities in decent, safe, and sanitary conditions must implicitly run to the benefit of the tenant as an implied term in their leases. We reject this contention for reasons similar to our rejection of plaintiffs' suggestion that we follow state court decisions in implying a warranty of habitability.

The stated Congressional purpose of providing a "decent home and a suitable living environment for

6. Plaintiffs cite as examples of this "comprehensive" scheme 24 C.F.R. Secs. 221.530(b), 221.545(c), and 221.529. We note that these sections pertain to the mortgagor's general duty to maintain facilities constructed under Sec. 221(d)(3) programs in the context of a much more comprehensive financial scheme relating to federally insured mortgages.

every American family," 42 U.S.C. Sec. 1441, expresses general Congressional objectives in instituting public housing programs. We fail to see how these objectives can be interpreted to impose upon HUD or its agent an absolute, fixed obligation to maintain suitable dwellings. Moreover, like many declarations of Congressional policy, 42 U.S.C. Sec. 1441 sets forth broad future objectives on a grand scale which are to be accomplished over a period of many years. The establishment of Congressional objectives, while certainly affording benefits to those eligible to partake of programs designed to attain those objectives, is not tantamount to a warranty that such objectives will be attained.

Accordingly, the judgment of the district court is affirmed.

AFFIRMED.

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

September 19, 1977.

Before

Hon. Thomas E. Fairchild, Chief Judge*
Luther M. Swygert, Circuit Judge
Hon. Walter J. Cummings, Circuit Judge
Wilbur F. Pell, Jr., Circuit Judge
Hon. Robert A. Sprecher, Circuit Judge
Philip W. Tone, Circuit Judge
William J. Bauer, Circuit Judge
Harlington Wood, Jr., Circuit Judge
William J. Campbell, Sr., District Judge**

GENANETT ALEXANDER, *et al.*,	)	
Plaintiffs-Appellants,	)	Appeal from the United
	)	States District Court for
No. 76-1993	)	the Southern District of
	)	Indiana, Indianapolis
vs.	)	Division.
	)	
UNITED STATES DEPARTMENT OF HOUSING	)	
AND URBAN DEVELOPMENT and CARLA	)	
ANDERSON HILLS, Secretary of the	)	
Department of Housing and Urban	)	
Development,	)	No. IP 74-706-C
Defendants-Appellees.	)	Cale J. Holder, Judge

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* Chief Judge Thomas E. Fairchild voted to grant a rehearing *in banc.*

** Senior District Judge William J. Campbell of the Northern District of Illinois is sitting by designation.

On consideration of the petition for rehearing and suggestion for rehearing *in banc* filed in the above-entitled cause by counsel for the plaintiffs-appellants, a vote of the active members of the Court was requested, and a majority of the active members of the Court have voted to deny a rehearing *in banc*. All of the judges on the original panel have voted to deny the petition for rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

STATUTORY PROVISIONS INVOLVED

Section 4601. Definitions

As used in this chapter—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6) The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

Section 4621. Declaration of policy

The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

Section 4622. Moving and related expenses—General provision

(a) Whenever the aquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule

established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

Section 4624. Replacement housing for tenants and certain others

In addition to amounts otherwise authorized by this subchapter, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4623 of this title which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 4623(a)(1)(C) of this title) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

Section 4625. Relocation assistance advisory services—Program for displaced persons and economically injured occupants of adjacent property.

(a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this chapter shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) the heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

Section 4626. Housing replacement by Federal agency as last resort

(a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(b) No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 4625(c)(3) of this title, is available to such person.